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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,314	12/16/2004	Karl Freudelsperger	71595	6738

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SCARBOROUGH, NY 10510-9227

EXAMINER
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GREENHUT, CHARLES N

ART UNIT	PAPER NUMBER
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3652

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/11/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/518,314

Applicant(s)

FREUDELSPERGER, KARL

Examiner

Charles N. Greenhut

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____                                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____   | 6) <input type="checkbox"/> Other: ____                           |

### **I Claim Rejections – 35 USC § 101**

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claim(s) 1-13 is/are rejected under 35 U.S.C. 101 as being directed to nonstatutory subject matter.
  - 1.1. Claims 1-13 are directed to nonstatutory subject matter because due to limitations requiring "manual" actions, the broadest reasonable interpretation of the claimed invention as a whole encompasses a human being.
  - 1.2. Claims 3-11 are directed to nonstatutory subject matter because they encompass more than one statutory class of invention.

### **II Claim Rejections - 35 USC § 112**

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - 1.1. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. Some examples of undefined or indefinite terms include: "central belt commissioning device", "suitable", "not suitable", "automatically directly", "targeted manner", "from there", "fall into a stationary container or immediately into a container arranged on the driven central belt", "to the right and/or left". This list is exemplary and not exhaustive. It is Applicant's responsibility to make a good faith effort to ensure all claims conform to the requirements of 35 USC 112 2<sup>nd</sup> paragraph.
  - 1.2. Claims 1, and 3 do not contain a definite preamble, transitional phrase and recitation of elements or steps, making it impossible to determine the scope of the claim for which protection is sought.
  - 1.3. It is not clear whether claim 3 is reciting an apparatus or a process

### **III Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 1, 3-4, 9, and 12 is/are rejected under 35 U.S.C. 102(b) as being anticipated by YUYAMA (US 5,832,693 A).

1.1. As best understood by Examiner, with respect to claim(s) 1, 3-4, 9, and 12 YUYAMA discloses commissioning articles (B) not suitable for central belt (e.g., 13-50), manually into containers (T), in a commissioning path (e.g., 13-50) to the right and/or left of the central belt (13-50), sending the manually commissioned articles (B) to a dispatch station (e.g., at X) or to the central belt commissioning device (e.g., at 50) for commissioning with articles (A) suitable for central belt (e.g., 13-50), the central belt provided in a bay aisle of a double shelf (U).

#### **IV Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 2, 5-8, 10-11 and 13 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over YUYAMA (US 5,832,693 A).

1.1. As best understood by Examiner, with respect to claim(s) 2 and 13, YUYAMA does not specify the exact location of the introduction of articles (B) into the tray (T) flow path, merely at or before station (X). The flow path of trays (T) consists of segments (13-50) having horizontal or vertical orientation. Introduction of the non-suitable articles (B) at either (51) or (50) would involve merely the rearrangement of parts that would be obvious to one having ordinary skill in the art and would be "in parallel" to sections (31) and (20') respectively, for example.

1.2. As best understood by Examiner, claim(s) 5-8 and 10-11 involve merely the rearrangement of parts that would be obvious to one having ordinary skill in the art. It would be obvious to one having ordinary skill in the art to arrange the conveyor and shelf system to conform to the design constraints of the implementation environment.

#### **V Conclusion**

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 6:30am - 3:00pm EST.

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3. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached at (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
4. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG



PATRICK MACKEY  
SUPERVISORY PATENT EXAMINER  
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